



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of N.S. Fire Fighter
(M1848W), City of Linden

CSC Docket No. 2021-463

Medical Examiners Panel Appeal

ISSUED: NOVEMBER 1, 2021 (DASV)

N.S. appeals the request by the City of Linden to remove his name from the Fire Fighter (M1848W) eligible list for medical unfitness to perform effectively the duties of the position.

N.J.A.C. 4A:4-6.5 provides for the Civil Service Commission (Commission) to utilize the expertise of the Medical Examiners Panel (Panel) to make a Report and Recommendation on medical disqualification issues. The Panel is composed of medical professionals, all of whom are faculty and practitioners of Rutgers New Jersey Medical School.

This appeal was brought before the Panel on August 9, 2021, which rendered its final Report and Recommendation on September 23, 2021.¹ The appellant and his brother, A.S., were present at the meeting. The appointing authority was not present. No exceptions were filed by the parties.

The report by the Panel discusses all submitted evaluations. In this case, the Panel's Chairperson, the Director of Occupational Medicine Service, Rutgers New Jersey Medical School, requested that a medical consultant perform a chart review and to make findings and recommendations regarding the appellant's medical fitness for the job in question. The appellant has monocular vision. In its report, the Panel noted that the appointing authority's physician and the medical consultant based their recommendations on the National Fire Protection Association (NFPA) standard,

¹ The Panel issued an initial report on August 10, 2021, and it requested additional information.

NFPA 1582, Comprehensive Occupational Medical Program for Fire Departments. Candidates with monocular vision do not meet the medical requirements of this standard. However, the Panel indicated that while the Commission takes into account NFPA 1582, it is not bound by it. The weight of the medical documentation was found to support the appellant's ability to perform the essential functions of the position. The Panel indicated that, although the appellant has monocular vision and does not have stereoscopic depth perception, he can compensate with other visual cues. Additionally, the appellant stated to the Panel that he had no issues driving, including at night, or performing his work, which was in construction and on roofs. Therefore, based on the evaluation of submitted information, the medical consultant's review, and the appellant's presentation at the Panel meeting, the Panel did not concur with the appellant's medical disqualification for a Fire Fighter position. Rather, it recommended that the appellant be considered to be medically capable of undergoing the training involved to be a Fire Fighter and to perform the duties associated with the position. The Panel noted that the appellant's successful completion of the Fire Academy would "provide further credence to [its] recommendation."

CONCLUSION

The Job Specification for the title of Fire Fighter is the official job description for such positions within the Civil Service system. According to the specification, Fire Fighters perform rescue operations; aid in emergency situations involving hazardous or toxic materials; administer emergency medical treatment; maintain all related equipment, buildings and grounds; and conduct related work. Examples of work include extricating victims from entrapment; guiding or carrying victims; identifying search areas; driving and maneuvering fire apparatus for optimal firefighting position; identifying fire source and type and anticipating fire behavior; searching for indications of fire cause and protecting this evidence for later scrutiny; laying and connecting hose to hydrants, standpipes, and intake and discharge valves; directing water stream at or as near as possible to source of fire or other target to extinguish fire or to cool given target, and to prevent ignition; locating and exposing hidden structural fires; raising, lowering positions and stabilizing straight ladders, aerial ladders or basket trucks; touring site and noting locations of firefighting resources, corridors, exits, and hazardous materials; and making periodic inspections and issuing citations to ensure compliance with safety regulations.

Additionally, Fire Fighters are entrusted with the safety and maintenance of expensive equipment and vehicles and are responsible for the lives of the public and other officers with whom they work. Some of the skills and abilities required to perform the job include the ability to work closely with people, including functioning as a team member, to exercise tact or diplomacy and display compassion, understanding and patience, the ability to understand and carry out instructions, and the ability to think clearly and apply knowledge under stressful conditions and to

handle more than one task at a time. A Fire Fighter must also be able to follow procedures and perform routine and repetitive tasks and must use sound judgment and logical thinking when responding to many emergency situations. Examples include conducting step-by-step searches of buildings, placing gear in appropriate locations to expedite response time, performing preparatory operations to ensure delivery of water at a fire, adequately maintaining equipment and administering appropriate treatment to victims at the scene of a fire, *e.g.*, preventing further injury, reducing shock, and restoring breathing. The ability to relay and interpret information clearly and accurately is of utmost importance to Fire Fighters as they are required to maintain radio communications with team members during rescue and firefighting operations.

Having considered the record, including the Job Specification for Fire Fighter, and the Panel's Report and Recommendation issued thereon and having made an independent evaluation of the same, the Commission accepts and adopts the findings and conclusions as contained in the Panel's Report and Recommendation that the appellant is medically fit to undergo the training involved to be a Fire Fighter and perform effectively the duties of the position. The Panel set forth that notwithstanding the appellant's monocular vision, he will be able to compensate for his lack of depth perception with other visual cues. Moreover, as correctly noted by the Panel, the Commission is not bound by NFPA 1582. In that regard, the Commission notes that while the NFPA standard is appropriate to use as one factor in determining the fitness of a Fire Fighter, the opinions of a physician determining fitness should not be solely based on this standard. Those determinations should be based on the actual level of fitness presented by any given candidate. Further, the appointing authority has not presented any State law or regulation which precludes an individual who has monocular vision from serving as a Fire Fighter. Accordingly, the Commission finds that the Panel made a recommendation that, with reasonable medical certainty, the appellant is able to perform the essential functions of the job of Fire Fighter and accepts that recommendation.

The Commission, however, notes that, as in all cases involving medical disqualification, if the appellant is successful in the appeal, the appellant must undergo an updated background check to ascertain if any disqualification issue exists. This updated background check may include a psychological examination. In that regard, a recent psychological examination can be considered part of an updated background check if either: (1) the eligible had not previously been subject to such an examination,² or (2) based on an event that occurred between the original certification and the updated background check, there is a legitimate concern that intervening

² It is noted that a psychological assessment for employment in public safety positions is generally considered valid only for one year. *See e.g., In the Matter of Aleisha Cruz* (MSB, decided December 19, 2007), *aff'd on reconsideration* (MSB, decided April 9, 2008).

circumstances require that the eligible undergo an updated evaluation to ensure such fitness. *See In the Matter of Juan C. Betancourth* (MSB, decided February 27, 2002).

In the present matter, the appellant's name was certified from the Fire Fighter (M1848W), City of Linden, eligible list on June 20, 2019, and while he was removed for not meeting the medical requirements, the City of Linden's psychological evaluator found the appellant to have met the psychological requirements for the position of Fire Fighter as of December 2, 2019, when he passed the psychological evaluation. The City of Linden's certification was disposed on September 24, 2020. When the City of Linden's certification was pending, agency records indicate that the appellant was also certified on February 27, 2020 from the Fire Fighter (M1851W), Millburn Township, eligible list. In disposing of the certification, Millburn Township requested the appellant be removed on the basis of psychological unfitness to perform effectively the duties of the position of a Fire Fighter. The certification was disposed on November 30, 2020, and notices of the disposition of the certification were sent to the eligibles. The appellant did not file an appeal of that removal. Thus, the appellant has in effect been removed from the pool of eligibles for Fire Fighter (M9999W), and his name would not ordinarily be restored. In this regard, *N.J.A.C. 4A:4A:4-4.7(g)* states that when the Commission has accepted a single application for one or more title areas, pursuant to *N.J.A.C. 4A:4-2.3(c)*, an eligible whose name has been removed from the pool of eligibles for one jurisdiction or title area for cause shall be removed from the pool of eligibles for any other jurisdiction or title area. The Fire Fighter (M1848W), City of Linden, and Fire Fighter (M1851W), Millburn Township, eligible lists were derived from a single examination application for Fire Fighter (M9999W). It is noted that the sub-lists for Fire Fighter (M9999W), which includes the Fire Fighter (M1848W), City of Linden, eligible lists promulgated on March 29, 2019 and expires on March 28, 2022.

Nonetheless, because the appellant was given a conditional offer of appointment by the City of Linden, and he was found at the time to have met the psychological requirements for the position, and he has now been considered medically cleared for a position as a Fire Fighter with the City of Linden, the Commission shall restore his name only to the Fire Fighter (M1848W), City of Linden, eligible list and mandate his appointment absent any disqualification issue ascertained through an updated background check which shall include a current psychological examination conducted by the City of Linden. Given the above intervening event of the appellant being deemed psychologically unsuited for a Fire Fighter position, the Commission cannot ratify the appellant's appointment until he undergoes an updated evaluation to ensure his current psychological fitness. Should the appellant not be found to meet the psychological requirements for a Fire Fighter position at this time, the City of Linden shall return the June 20, 2019 certification of the Fire Fighter (M1848W), City of Linden, eligible list to the certification unit noting the appellant's removal based on psychological reasons and present it with the applicable supporting documentation. The appellant will then have an opportunity

to file an appeal of that removal. If the appellant's background check and psychological assessment are returned as favorable, the appellant's appointment is mandated, and the appointing authority shall return the subject certification indicating the appellant's appointment.

ORDER

The Commission finds that the appointing authority has not met its burden of proof that N.S. is medically unfit to perform effectively the duties of a Fire Fighter and, therefore, the Commission orders that his name be restored to the subject eligible list absent any disqualification issue ascertained through an updated background check, which shall include a current psychological evaluation.

Absent any disqualification issue conducted after a conditional offer of appointment, the appellant's appointment is otherwise mandated. A federal law, the Americans with Disabilities Act (ADA), 42 U.S.C.A. sec. 12112(d)(3), expressly requires that a job offer be made before any individual is required to submit to a medical or psychological examination. *See also*, the Equal Employment Opportunity Commission's *ADA Enforcement Guidelines: Preemployment Disability Related Questions and Medical Examinations* (October 10, 1995). That offer having been made, it is clear that, absent the erroneous disqualification, the aggrieved individual would have been employed in the position.

Therefore, should the appellant pass the updated background check, including a current psychological evaluation, upon successful completion of his working test period, the Commission orders that the appellant be granted a retroactive date of appointment as a Fire Fighter to January 10, 2020, the date he would have been appointed if his name had not been removed from the subject eligible list. This date is for salary step placement and seniority-based purposes only. However, the Commission does not grant any other relief, such as back pay, except the relief enumerated above.

This is the final administrative determination in the matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 27TH DAY OF OCTOBER, 2021



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